HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE C.V. NAGARJUNA REDDY

WRIT APPEAL NO. 1212 OF 2006

Between:

Gembali Venkata Ram

..... Appellant

AND

The Deputy Registrar of Co-operative Societies,
Parvathipuram – cum- Special Officer of Bobbili
Cooperative Urban Bank Limited, Bobbili & others.

.....Respondents

:: J U D G M E N T ::

Counsel for the appellant : Shri D. Ramalinga Swamy

Counsel for respondent No.3 : Shri K. Subramanyam

Dated: 20.11.2006

Per G.S.SINGHVI, CJ

This is an appeal for setting aside order dated 07.09.2006 passed by the learned Single Judge, whereby he allowed the writ petition filed by the appellant and set aside the order impugned therein, but directed him to deposit Rs.10,00,000/- as a condition precedent to the affording of an opportunity of hearing by the arbitrator.

The appellant is a dealer engaged in the business of selling cement, iron and construction material at Bobbili, Vizianagaram District. He claims to have taken mortgage linked house loan of Rs.5,00,000/- from the Bobbili Co-operative Urban Bank Ltd. (for short, 'the bank') and is said to have repaid Rs.2,00,000/- (approximately). His wife is also said to have taken loan of Rs.7,50,000/- from the bank for purchase of a cinema theatre. In the year 2002, Commissioner for Co-operation and Registrar of Co-operative Societies, Hyderabad appointed Deputy Co-operative Officer, Parvathipuram as Special Officer/Administrator to investigate into the affairs of the bank. After one year, the bank instituted a case against the appellant for recovery of Rs.19,99,214/- by alleging that he had taken loan amounting to Rs.15,00,000/- in three instalments, but failed to repay the instalments on due dates. The movable properties of the appellant were also attached by the Sale Officer of the bank. Subsequently, an auction was conducted on 24.07.2004 and the highest bid of Rs.20,10,000/- given by one Sri Gudla Varaprasada Rao, Bobbili was accepted. However, on account of

non-payment of 1/4th bid amount by the bidder, the auction was cancelled. In the fresh auction conducted in November, 2004, the then Secretary of the bank is said to have given highest bid of Rs.20,40,000/-, which was confirmed by Deputy Registrar of Co-operative Societies, Parvathipuram.

In the meanwhile, the appellant filed a suit (O.S.No.184 of 2003) for injunction in the Court of Principal Junior Civil Judge, Bobbili, which was dismissed by the trial Court on 21-112005. Thereafter, he instituted Writ Petition No.20937 of 2005 with the following prayer:

> "It is, therefore, prayed that this Hon'ble Court may be pleased to issue a writ or order or direction more particularly in the nature of writ of mandamus, by calling records from respondent No.1 and declaring the award passed by respondent No.1 without there being any notice and/or without following due process of law and procedure in ARC.No.244/03-04 in Case No.19791 and E.P.No.949/2003-04 in Housing Loan No.5 with respondent No.3 as null, void, arbitrary, inoperative in law, ultra vires and violative of Article 14 and 300 A of the Constitution of India, and declare the subsequent alleged purchase by respondent No.3 as illegal and without any authority and more particularly without the permission of RBI as illegal, void, malafide, violative of principles of natural justice, unconstitutional, illegal, arbitrary, mala fide and pass such other order or orders as the Hon'ble Court may deem fit and necessary in the circumstances of the case.
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> Therefore, it is hereby prayed that this Hon'ble Court may be pleased to stay all further proceedings in ARC.No.244/03-04 in Case No.19791 including proceedings E.P.No.949/2003-04 and further direct the respondents not to interfere with the petitioner's day to day affairs in any way, pending disposal of the writ petition and pass such other order or orders as the Hon'ble Court may

deem fit and necessary in the circumstances of the case."

Respondent No.1 and 3 filed separate counter affidavits to contest the writ petition. They denied the petitioner's assertion that the action taken by the bank was vitiated due to arbitrariness and violation of the rules of natural justice.

The learned Single Judge did not advert to the pleadings of the parties and rival contentions and disposed of the writ petition by recording the following order:

> "The only grievance of the petitioner is that before passing the impugned order no notice of any kind was issued to him. Whereas, learned counsel for the respondents states that a notice was issued and it was signed by the petitioner.
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> Be that as it may, since the petitioner had not effectively participated in the proceedings before the Arbitrator, I deem it appropriate to give one more opportunity to the petitioner for representing his case.
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> Therefore, the impugned order is set aside subject to condition, petitioner deposits an amount of Rs.10,00,000/- (Rupees ten lakhs only) within two weeks from the date of receipt of a copy of this order, and on failure to do so, the impugned order shall be given effect to.
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> With the above direction, the writ petition is disposed of. No order as to costs."

At the commencement of hearing, we enquired from Shri D. Ramalinga Swamy, learned counsel for the appellant whether the award passed by respondent No.1 was placed on the record of the writ petition and whether the learned Single Judge had the opportunity to scrutinize the same before pronouncing upon its legality. In reply, the learned counsel

fairly stated that copy of the award was not filed along with the writ petition and the learned Single Judge did not have the benefit of going through the same. It is, thus, clear that the learned Single Judge disposed of the writ petition without even noticing that copy of the award, which was under challenge, had not been placed on the record of the writ petition. In our opinion, without having the benefit of perusing the award, which was sought to be quashed in the writ petition, the learned Single Judge could not have annulled the same on the ground of violation of the rules of natural justice and remanded the case for fresh adjudication.

At this stage, Shri D. Ramalinga Swamy made a request that his client may be permitted to withdraw this appeal and Writ Petition No.20937 of 2005 with liberty to file fresh petition on the same cause. He also made a request that the Court may direct the parties to maintain status quo in respect of the disputed property.

Shri K. Subramanyam, learned counsel appearing for respondent No.3 contested the last part of the request made by the counsel for the appellant and submitted that his client should not be deprived of the fruits of the highest bid given as early as in November, 2004.

We have thoughtfully considered the entire matter and are of the considered view that the appellant should not be made to suffer on account of the fault of his counsel in not placing on record the award impugned in the writ petition or on account of inarticulate drafting of the petition.

In the premise aforesaid, this appeal and Writ Petition

No.20937 of 2005 are dismissed as withdrawn with liberty to the appellant to institute fresh petition on the same cause. We also direct that for a period of seven days from today, the parties shall maintain status quo regarding possession of the property. Within this period, the appellant shall be free to file fresh petition and make a prayer before the learned Single Judge for grant of interim relief. If fresh petition is not filed within seven days or the learned Single Judge declines the appellant's prayer for interim relief, then the bank shall be entitled to take possession of the disputed property.

G.S.SINGHVI, CJ

C.V. NAGARJUNA REDDY, J

20.11.2006

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